

REMARKS

This communication responds to the Office Action mailed on April 14, 2009.

No claims are amended, claims 1-30 were previously canceled, no additional claims are canceled, and claims 58-60 are added. As a result, claims 31-60 are now pending in this application.

§ 102 Rejection of the Claims

Claims 31-33, 40-42, and 49-51 were rejected under 35 U.S.C. § 102(e) as being anticipated by *Naganathan* (U.S. 2004/0139194). This rejection is respectfully traversed since the Office Action fails to establish a prima facie case of anticipation of the claimed subject matter.

In order to anticipate a claim, a reference must teach all limitations, arranged or combined in the same way as recited in Applicant's claim. The Court of Appeals for the Federal Circuit recently held

[U]nless a reference discloses within the four corners of the document not only all of the limitations claimed but also *all of the limitations arranged or combined in the same way as recited in the claim*, it cannot be said to prove prior invention of the thing claimed and, thus, cannot anticipate under 35 U.S.C. § 102. (*Net MoneyIn, Inc. v. Verisign, Inc.*, No. 2007-1565 at 17. (Fed. Cir. Oct. 20, 2008.) Emphasis added.)

Because *Naganathan* fails to disclose all limitations of independent claims 31, 40, and 49, these claims are not anticipated, and are thus novel.

In particular, claim 31 recites, in pertinent part:

[E]xecuting a testing scenario, said executing of said testing scenario including repeatedly receiving request messages from an entity over a network at a testing application on a server or servlet engine, said testing application being a software program that tests availability of other software programs and/or components, at least one of said software components including a login procedure for its availability test ... ; and

at least one of said request messages providing a respective user identification for the at least one software component including a login procedure for its availability test (emphasis added).

Each of Applicants' other independent claims, namely claims 40 and 49, shares similar limitations with claim 31.

The Office Action stated, at pp. 2-3, paragraph 2, that *Naganathan* teaches the above-quoted elements of claim 31. The Office Action supported this rejection by pointing to paragraphs [0012], [0039], and [0044] of *Naganathan*. In particular, in response to Applicants' previous arguments presented on February 9, 2009, the Office Action further stated, at p. 8, first and second full paragraphs, that:

In response to C) *Naganathan* server 221 (fig. 2) enforces security models, authenticating users and handling all user session management (see P[0034]). *Naganathan* also teaches storing username and password in table to authenticate the user (see P [0050, 0051]). It is well known in the art that username and password are used to authenticate user. When the user sends request to find availability of services username must be provided for to access the system. Therefore, teaching of *Naganathan* meets the scope of the limitation as claimed. (Emphasis added.)

Applicants respectfully disagree with the statements and assertions made in the Office Action.

Naganathan relates to "allow[ing] users to measure and monitor the availability of network services by regularly contacting the services to determine the availability of the accessed service." *Naganathan*, paragraph [0012]. Under *Naganathan's* approach, "[t]he server layer 220 comprises a server 221 that accepts requests from users through the consoles 210 and passes these requests to the appropriate agents in the agent layer 230." *Naganathan*, paragraph [0033]. The server in *Naganathan* "enforces the security models, authenticating users and handling all user session management." *Naganathan*, paragraph [0034]. *Naganathan*, however, fails to discuss "at least one of said software components [to be tested by the testing application] including a login procedure for its availability test" as recited in claim 31.

Specifically, *Naganathan* does not describe that any of the accessed services being monitored has a login procedure for its availability test. Accordingly, *Naganathan* also fails to show "providing a respective user identification for the at least one software component

including a login procedure for its availability test” as recited in claim 31. Specifically, although *Naganathan* discusses providing ‘user passwords’ and ‘user name’ using a ‘scalar table generator’ and a ‘vector generator,’ respectively, (*see* paragraphs ([0047], [0050], [0051] and [0053])), there is no indication that the user password and the user name in *Naganathan* are provided to a corresponding accessed service being monitored for use in the login procedure for its availability test. Applicants are unable to find any such teachings within the bounds of *Naganathan*.

Thus, for at least the reasons stated above, *Naganathan* fails to show each and every element of independent claim 31.

Assuming *arguendo*, even if *Naganathan* does disclose all the elements of independent claim 31, which is strongly denied, *Naganathan* does not show the elements as arranged in the claim as required by the *Net MoneyIn* court, cited above. Specifically, even if the user passwords and/or the user name in *Naganathan* were hypothetically viewed as being used by the server in the login procedure for the availability test of the corresponding accessed services, which is strongly denied, there is no indication that any of the user passwords or the user name is provided to a ‘monitor module’ which is alleged to be a testing application in claim 31 via a request message for the availability test sent over a network. To the contrary, *Naganathan* simply states that “the user is able to populate a scalar table generated by the scalar table generator 420 by providing ... user passwords (paragraph [0050]) ... [t]he vector generator ... generates any other common configuration parameters such as the username (paragraph [0051]) ... [t]he configuration unit 460 stores configuration information data for each service being monitored ... such as the username (paragraph [0053]).” The arguments in support of the patentability of independent claim 31 apply similarly to each of independent claims 40 and 49.

Therefore, for at least the reasons stated above, Applicants respectfully assert that independent claims 31, 40, and 49 are in condition for allowance. Thus, Applicants respectfully request that the rejection of claims 31, 40, and 49 under 35 U.S.C. § 102(e) be reconsidered and withdrawn.

Claims 32, 33, 41, 42, 50, and 51 depend from their respective independent claims 31, 40, and 49, and may also include additional patentable subject matter. Thus, for at least the reasons stated above with respect to independent claims 31, 40, and 49, Applicants respectfully request

that the rejection of claims 32, 33, 41, 42, 50, and 51 under 35 U.S.C. § 102(e) also be reconsidered and withdrawn.

§ 103 Rejection of the Claims

Claims 34-39, 43-48, and 52-57 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Naganathan* in view of *Zhang et al.* (U.S. 6,842,891, hereinafter “*Zhang*”). This rejection is respectfully traversed.

Naganathan was discussed in the preceding section. *Zhang* was cited allegedly to remedy *Naganathan*'s deficiencies of the features recited in claims 34-39, 43-48, and 52-57. *See* Office Action, pp. 4-6, paragraph 3. *Zhang* does not, however, provide the features of independent claims 31, 40, and 49 that are shown to be missing from *Naganathan*. For example, *Zhang* fails to show “at least one of said software components [to be tested by the testing application] including a login procedure for its availability test” as recited in the claimed subject matter. Specifically, although *Zhang* uses a ‘Log MGR’ module “configured to handle the logging of activities inside the system controller by implementing a plurality of log files having XML format (*Zhang*, col. 8, lines 17-21),” the system controller in *Zhang* is an application “configured to locate a test service having attributes suitable to run the test execution request (*Zhang*, col. 9, lines 65-67)” and not a software component to be tested by the test service.

Thus, for at least the reasons stated above, neither *Naganathan* nor *Zhang*, alone or in combination, teaches or suggests all the elements claimed in independent claims 31, 40, and 49.

Claims 34-39, 43-48, and 52-57 depend from independent claims 31, 40, and 49, and may include additional patentable subject matter. Thus, for at least the reasons stated above with respect to independent claims 31, 40, and 49, Applicants respectfully request that the rejection of claims 34-39, 43-48, and 52-57 under 35 U.S.C. § 103(a) be reconsidered and withdrawn.

New Claims

Claims 58-60 have been newly added. New claims 58-60 are fully supported in the original specification, for example, at paragraph [0049]. Thus, Applicants respectfully assert that no new matter has been added. Claims 58-60 are asserted to be allowable as being dependent on their respective independent claims 31, 40, and 49, which are submitted to be allowable. In addition, neither *Naganathan* nor *Zhang*, alone or in combination, teaches or suggests “the request messages are sent over the network to the testing application at a specified interval” as recited in new claims 58-60 (emphasis added). Specifically, although *Naganathan* discusses “send[ing] periodic requests to the various services” that are being monitored, the periodic requests in *Naganathan* are sent to the various services by “a plurality of user loadable monitor modules” included in “the system availability measurement and monitoring system (SAMM).” *Naganathan*, paragraph [0044] (emphasis added). In fact, under *Naganathan*’s approach, “the user checks for a particular service’s availability by regularly sending dummy transactions to the service per the user’s request” and not at a specified interval. *Naganathan*, paragraph [0013] (emphasis added). Applicants were unable to find the above-quoted elements of claims 58-60 within the bounds of *Naganathan* or *Zhang*, alone or in combination. Therefore, for at least the reasons stated above, Applicants respectfully request that new claims 58-60 be considered and allowed.

CONCLUSION

Applicants respectfully submit that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone the undersigned representative at (408) 660-2015 to facilitate prosecution of this application.

If necessary, please charge any additional fees or deficiencies, or credit any overpayments to Deposit Account No. 19-0743.

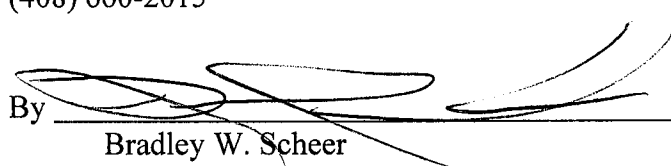
Respectfully submitted,

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Date

July 31, 2009

By


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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 31st day of July, 2009.

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Signature

